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Committee on the Elimination of Racial Discrimination

Eighty-ninth session

Summary record of the 2424th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 26 April 2016, at 3 p.m.

Chair: Ms. Crickley

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The meeting was called to order at 3 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Twenty-first to twenty-third combined periodic reports of Spain (CERD/C/ESP/21-23; CERD/C/ESP/Q/21-23; HRI/CORE/ESP/2015)

1. *At the invitation of the Chair, the delegation of Spain took places at the Committee table.*

2. **Ms. Menéndez** (Spain) said that putting in place policies to promote equality and to eliminate all forms of discrimination was a priority of the Government of Spain. A number of important legislative amendments and policy developments had taken place in Spain since the submission of the State party report (CERD/C/ESP/21-23) in August 2014. The Criminal Code had been revised to better tackle hate crimes by clarifying the definitions of the relevant offences, introducing more severe sentences and criminalizing new offences, such as use of the Internet to spread information that incited hate crimes. The Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems had entered into force for Spain in 2015.

3. New rules and regulations for migrant holding centres, adopted in March 2014, contained provisions regulating the most important aspects of their operations, including the rights and obligations of detainees. Organic Act No. 4/2015 on the protection of public safety required the security forces to adhere to the principles of non-discrimination, proportionality and equality when conducting identity checks. Legislation enacted in April 2015 strengthened support for victims of crime, including racially motivated acts. A network of victims' assistance offices had been set up to enable persons who believed they had been victims of racial or ethnic discrimination to obtain information and guidance on their rights and on the specialized services available to assist them in submitting a complaint and in seeking psychological support.

4. The Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, adopted in 2011, was currently the main instrument guiding the Government's approach to combating racial discrimination and implementing the State party's obligations under various international human rights treaties. The Strategy sought to address the particular challenges faced by Spanish society in relation to the significant increase in the country's immigrant population in recent years.

5. **Ms. Iturzaeta Manuel** (Spain) added that the Comprehensive Strategy provided a framework for institutional cooperation and coordination and for collaboration with civil society. An agreement signed in 2015 by a number of Government entities and ministries encouraged collaboration in policymaking, training and awareness-raising activities, data collection and research aimed at preventing and detecting racism, xenophobia and intolerance. Evaluations would be conducted periodically to assess progress in implementing the Strategy and identify challenges to be addressed in the future.

6. **Ms. Menéndez** (Spain) said that the Government was working to enhance the collection of data on racist and xenophobic incidents and racial discrimination, which was essential to developing appropriate policies and designing prevention and protection measures. The criminal statistics system had been improved in order to record accurate, disaggregated data on incidents motivated by racism or xenophobia. Training had been provided to around 22,000 law enforcement officials and a police training manual and action protocol had been developed in order to clearly set out the regulations on identifying and recording racist or xenophobic incidents and improve police handling of such incidents.

Training had also been carried out to enable health-care professionals to identify and report injuries resulting from acts of racism, hate or discrimination.

7. **Ms. Candela Quintanilla** (Spain) said that numerous studies and surveys had been carried out to enhance understanding of the causes of racial discrimination in Spain so as to be able to design more effective public policies. The Government published annual reports on racial discrimination and related issues and had also produced practical guides and training materials to guide both the general public and specialized audiences in tackling racism and xenophobia.

8. **Ms. Menéndez** (Spain) said that a plan on coexistence had been drafted in 2016 to prevent bullying and violence in schools and to promote inclusive education. Numerous training projects, including the publication of a manual on preventing and detecting racism and xenophobia in schools, had been carried out to raise awareness of those issues among professionals in the education system.

9. **Mr. Aya Onsalo** (Spain) said that a special prosecutor for equal treatment and against discrimination had been appointed in 2011 to provide an institutional response to the problem of discrimination. A network of prosecutors had also been set up to provide specialized protection to victims of hate crimes and racial discrimination. The prosecutors were responsible for detecting, investigating and prosecuting hate crimes in their respective regions.

10. **Ms. Menéndez** (Spain) said that a framework protocol had been adopted in 2014 with a view to coordinating the work of all relevant government bodies responsible for dealing with unaccompanied minors. It was intended to ensure that the identification and registration of such minors was carried out in accordance with the principle of the best interests of the child, regardless of nationality. Efforts to protect the Gypsy population and support their integration were guided by the National Strategy for the Social Inclusion of the Gypsy Population and the plans of action for its implementation. A wide range of activities had been carried out to achieve the Strategy's objectives.

11. The most recent reports and surveys had shown that the Spanish population continued to become more tolerant and accepting towards immigrants. Nonetheless, the Government was aware that much remained to be done. It intended to focus its future efforts on several specific challenges, namely combating hate speech; preventing the dissemination of racist or xenophobic content on the Internet and at sporting events; improving the identification and recording of incidents of racism, xenophobia and intolerance in general; providing training to legal professionals and improving the collection of data in the judicial sphere on crimes related to racism and other forms of intolerance; and continuing to raise awareness and collaborate with civil society to curb discrimination, racism and xenophobia, with special attention to victims of those phenomena.

12. **The Chair** thanked the delegation for their introductory remarks and commended the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

13. **Mr. Murillo Martínez** (Country Rapporteur) said that there had been a number of significant developments in Spain in the fight against racism and discrimination, such as the reforms to the Criminal Code, the appointment of the special prosecutor for equal treatment and against discrimination and the efforts made to combat hate speech and racial profiling. At the same time, the economic and financial crisis had led to drastic cuts in the social welfare system, which had been particularly detrimental to the most vulnerable populations. The humanitarian crisis in the Mediterranean region had generated internal tension in Spain. The tragic situation of migrants and asylum seekers was an enormous challenge for Europe as a whole. The Committee would be interested to learn more about the steps taken by the

Government to address that crisis. In particular, the deaths of 15 African migrants in February 2015, in which the Spanish Civil Guard had been implicated, was of great concern. Had exhaustive investigations been conducted to determine exactly what had happened? The ongoing political crisis in Spain could also potentially have important consequences in relation to human rights considerations.

14. The progress achieved by Spain in eliminating racial discrimination should be measured against two important benchmarking frameworks, one being the Sustainable Development Goals and the 2030 Agenda for Sustainable Development and the other the Durban Declaration and Programme of Action. The latter condemned racism and racial discrimination and had given greater visibility to persons of African descent in international law and highlighted the negative effects of the transatlantic slave trade and the institution of slavery in the Americas, in which Spain had played a leading role. The State party should take steps to raise public awareness, including through school curricula, of the country's historical involvement in the slave trade and of the enduring impact of slavery on persons of African descent around the world.

15. He would like to know whether the State party had provided, or planned to provide, reparation to the descendants of victims of the slave trade, whether persons of African descent were encouraged to play an active role in public life in Spain and whether they were represented in national decision-making bodies. Noting with concern that Spanish citizens of African descent and their children were, to a certain extent, still treated as foreign nationals in their own country, he asked what steps the State party was taking to remedy that situation of inequality. The State party should act without delay in order to forestall the civil unrest that had occurred in other countries as a result of social disenfranchisement and unequal treatment of certain groups of citizens.

16. Noting that Spain was the fourth most popular route of entry to Europe for migrants and that some 70 asylum seekers had drowned in Spanish waters in 2015, he asked what the State party was doing to address the migration crisis and what its policies were on granting international protection and welcoming migrants seeking asylum or refugee status. It would also be useful to know whether the public had access to reliable statistical data on the migration situation in Spain, including both the recent influx of asylum seekers and the outflow of immigrants returning to their countries of origin as a result of the financial crisis in Spain. He wished to know how the migrant population was contributing to the country's development and whether the public was informed of its contribution, especially given the common perception that migrants deprived Spanish nationals of employment opportunities and other benefits.

17. Although reports received from non-governmental sources pointed to a reduction in racial profiling in the State party, the practice still appeared to be widespread, with migrants from sub-Saharan Africa in particular being singled out by law enforcement officers for identity checks. He asked what measures the State party had taken to eradicate that practice. The Committee had also received reports that persons held in migrant holding centres were often subjected to torture and other forms of ill-treatment assault and that female detainees routinely suffered sexual assault at the hands of public officials and law enforcement officers. While the Committee noted that the State party had taken steps to address the situation in migrant holding centres, it would appreciate additional information on the progress made in that regard. He requested the delegation to comment on allegations that, in Ceuta and Melilla, migrants from sub-Saharan Africa were treated less favourably than migrants from other regions and that their freedom of movement was often severely restricted.

18. In Spain, the growing prevalence of hate speech towards migrants and the emergence of far-right political parties was of concern, although the problem was less serious than in other European countries. He wondered what the Government was doing to

keep the situation in check. Alternative sources attributed many of the problems relating to racism and xenophobia in the country to a lack of visible political leadership in the fight against those phenomena. He invited the delegation to comment on that observation.

19. The disproportionate impact of the financial crisis on the migrant population had led to the emergence of "ghetto" schools, where the vast majority of students were migrants or belonged to an ethnic minority. He asked what measures the State party had taken to address what could be perceived as educational segregation. Lastly, he drew attention to the recommendations of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, who had called upon the State party to earmark funding for social integration, especially of the Roma population; to ensure that any austerity measures adopted were not discriminatory towards disadvantaged segments of society; and to ensure equal access to social services for all. He also noted that NGOs and civil society organizations had urged the State party to review its aggressive border policy vis-à-vis African migrants and to increase the fairness of its visa regime.

20. **Mr. Calí Tzay**, recalling that Spain had adopted the United Nations Guiding Principles on Business and Human Rights and that the Government was preparing a national action plan aimed at ensuring compliance with those principles by Spanish multinational companies operating abroad, asked when that plan would be adopted and whether it would accurately reflect the views of civil society, which had hitherto been excluded in favour of protecting the interests of the multinationals in question. The Committee was deeply concerned over the negative impact of the activities of certain Spanish multinational companies working in the extractive industries on indigenous lands in Latin America, particularly as the companies in question had reportedly failed to obtain the free, prior and informed consent of the indigenous communities affected before beginning their operations. For example, in Paraguay, the State-sanctioned deforestation operations of a Spanish multinational company had apparently driven an indigenous community out of its jungle home, cutting off its means of subsistence.

21. He requested additional information on the measures taken to address the phenomenon of "ghetto" schools and ensure an even distribution of students between schools. He also invited the delegation to comment on reports that it was still common for press articles to exhibit a racist bias. Lastly, he wished to know whether the State party intended to ratify the amendments to article 8 of the Convention concerning financing of the Committee's activities and whether it intended to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals in accordance with article 14 of the Convention.

22. **Mr. Kemal** said that the adoption of the numerous new legislative measures outlined in the State party report was a welcome development. However, the Committee continued to harbour serious concerns over the scale of the European migration crisis and the consequences of the large influx of migrants arriving in European countries, including Spain. He invited the delegation to share its assessment of the likely impact of the arrival of large groups of migrants in Spain in the short and medium term and to indicate how the Government intended to prepare for such an eventuality. Receiving countries could not afford to take a laissez-faire approach to mass migration and offer only short-term solutions to the problem. International financial assistance was the key to generating sufficient employment opportunities to induce people to remain in their countries of origin rather than migrating. Initiatives such as the United Nations Alliance of Civilizations, initially proposed by the Government of Spain, could prove effective in alleviating the problem of mass migration.

23. The Committee would also like to receive detailed information on the implementation of the special regime established under Organic Act No. 4/2015 on the protection of public safety, which would allow the denial of entry at the border and the

summary return of migrants, especially in Ceuta and Melilla, and on the reported broadening of the scope of Spanish anti-terrorism legislation to grant the police sweeping powers to arrest persons suspected of terrorism.

24. The situation of the Roma in Spain appeared to have improved considerably, although more needed to be done. Persons of African descent, meanwhile, continued to suffer from the effects of racial profiling, which, in extreme cases, could prevent them from going about their daily lives. Noting that the State party did not collect disaggregated data in the manner prescribed by the Committee on the grounds that to do so would constitute discrimination, he invited the delegation to consult the guidance note on a human rights-based approach to data, prepared by the Office of the United Nations High Commissioner for Human Rights.

25. **Mr. Avtonomov**, commending the methodology used in preparing the State party report and particularly the effort made to respond to the Committee's previous recommendations, said that in future it would be helpful if the State party could flag the specific topic addressed in the relevant recommendation. The report indicated that the State party had condemned the enslavement of Africans and the slave trade, but he wondered whether it also had a position on the enslavement of indigenous peoples in the Americas during the period of Spanish colonization. As to legislation, he wondered whether all the reforms envisaged in the bill on amendment of the Criminal Code had in fact occurred and whether the amended Code was in force. The new law on public safety had been presented as a step forward in the protection of human rights, notably the rights of foreigners and migrants, but, according to information received, in some ways the new legislation had instead exacerbated the situation. Foreigners were now obliged, for example, to carry official identity papers, or a passport, issued in their country of origin, but that was not always possible, particularly for refugees, who might have lost their papers. Similarly, the Act broadened the scope for carrying out identity checks on the rather vague grounds of "prevention of administrative offences". He would appreciate some clarification of those provisions.

26. **Ms. Dah** said that, despite the overall clarity of the report and the commendable wealth of detail it contained, even a close reading gave no hint of the State party's policy on integration of immigrants, whether recent or long-settled, into the population of Spain. She was particularly interested in the situation of Afro-descendants and migrants of African origin. The State party had explained its view on the collecting of statistics on racial or ethnic origin, namely that it might result in discrimination, but such statistics were in fact an indicator of the success or failure of any given policy. She would like to know what proportion of members of parliament or of regional or local assemblies, for example, were also members of a particular ethnic group, and how visible such groups were in the justice system.

27. It was striking that the State party had conducted numerous studies on the problems caused by discrimination, but she wondered what lessons had been learned from them. Had they made it possible, for example, to quantify the impact of the financial crisis on integration policy or on education or health policies? She was also curious to know whether demands for referendums on regional autonomy were prompted by purely economic considerations or if there was also an ethnic factor at work.

28. **Ms. McDougall** said that she, too, was interested in the situation of populations that could no longer be considered migrants as they had been resident in the country for a long time and were no longer the subject of the kind of concerns arising from recent migrant flows. With regard to the Roma, for example, she found it difficult to form a picture of how their situation had improved since the State party's previous report. Similarly, information received from Spanish NGOs suggested that Afro-descendants were not necessarily represented on panels or committees set up to address integration issues that affected those

very communities. They should be a part of efforts to address issues from across the whole polity. She would welcome the delegation's views on those matters.

29. In line with Sustainable Development Goal 10, on reducing inequality within and between countries, it was important for governments to ensure that the burden of crises such as the recent financial crisis was not born in undue measure by minority populations. The collection of statistical data was recommended as a means of helping the competent authorities to appreciate the relative situations of the various groups in society. She was interested to know if the Spanish Government was looking at economic disparities between the general population and the Roma and Afro-descendant populations and whether it had any plans for special measures to improve the situation of the latter groups.

30. **Ms. Shepherd** enquired whether Spain had ratified the ILO Domestic Workers Convention, 2011 (No. 189). She pointed out that, as education had the potential to break down stereotypes and address racial discrimination, the right to education under the Convention was not about access only but also about content. Accordingly, she wondered to what extent the curriculum in the State party's education system brought out the contribution that had been made by Afro-descendants to the development of Spanish society. The report mentioned the State party's support for the International Decade for People of African Descent, whose Programme of Activities called on States to promote greater knowledge and recognition of and respect for the culture, history and heritage, and contribution of people of African descent, including through education. She wondered what importance was attached in practice to the Decade in Spain, given that there was a widespread perception that Afro-descendants were people who fed off the State: if people could see them as having made a contribution to Spain's development, they could be seen not as beggars but as a group with its own right to development.

31. The State party report referred to the United Nations Alliance of Civilizations, the aim of which was to promote dialogue and cooperation between different communities, cultures and civilizations and to build bridges to unite peoples and individuals, irrespective of their cultural or religious differences. She wondered how such an alliance was possible in situations where a particular issue continued to cause conflict, the issue in question being the actions of Spain during its colonial past. Caribbean countries, for example, were calling for a discussion on reparatory justice for the populations concerned. Similarly, there was tension in Spain itself surrounding its national day. Such an event was supposed to bring people together around a set of shared values, yet the date commemorated — the anniversary of Columbus's landing in the Americas — sent different messages to different people. She would like to know what steps the State party had taken to enter into dialogue on those issues with people who had been historically marginalized as a result of colonialism. Such a dialogue could be a route to peace and understanding.

32. **Mr. Khalaf** said that he would like additional information on the remedy of *amparo*, which was designed to grant judicial protection from discrimination. Would *amparo* cover violations of articles of the Convention, for example? Was it available only after other remedies had been exhausted and was it only for Spanish citizens or might any victim apply for *amparo*, regardless of nationality? Among the large number of refugees and migrants coming to Spain were members of small ethnic groups that were at risk of disappearing completely. It was therefore important for members of such vulnerable groups not to be dispersed across the territory but to be able to live as a community. He wondered whether Spain had a policy of keeping such communities together. He would appreciate an explanation for the practice of illegal summary refoulement by the Civil Guard of migrants arriving at the Spanish border. Such actions deprived victims of two specific rights, namely the right to legal assistance and the right to an interpreter.

33. **Mr. Amir** said that he understood that the majority of persons of African descent lived in a single district in Madrid. He wondered whether such an area, housing a

population entirely drawn from the same culture and ethnic background, might be considered a ghetto. In any case, when groups were isolated in terms of housing and schools, for example, and were not integrated into the mainstream of society, security risks could arise. In Belgium, following the recent terrorist attacks, it had been found that those involved had lived in a more or less closed community in a district over which society at large had little control. He was not sure that an integration policy could be deemed sound if it failed to ensure that minority groups became integrated into society.

34. **Mr. Bossuyt**, noting that the country's approximately 750,000 Gypsies were not recognized as a minority, asked whether a distinction was made between Spanish-born Gypsies and Roma from Romania and elsewhere in Eastern Europe living in Spain, and whether the Government had a special policy for the latter group, particularly if they were unable to support themselves. The State party report indicated that the labour force participation rate was slightly higher among Gypsies than among the overall population but also that the unemployment rate among Gypsies was higher than average. How was that possible? Welcoming the fact that 100 per cent of Gypsy children were enrolled in primary school, he invited the delegation to comment on how that result had been achieved. He requested details of the special agreement on health-care provision for foreigners in an irregular situation and the conditions for obtaining such coverage.

35. **Mr. Yeung Sik Yuen** said that the fact that Spain was among the most popular destinations for asylum seekers reflected well on the country's quality of life and the openness of its society. However, the influx of asylum seekers also presented problems, and Spain faced challenges in meeting its international obligations in that area. He expressed concern at the perceived unfairness of the asylum application process and the unduly long waiting times, particularly for certain Malians, Ukrainians and Iraqis, whose cases had taken between three and four years to be considered. He invited the delegation to comment on the treatment of asylum seekers from sub-Saharan Africa attempting to enter Spain through Ceuta and Melilla and on how the principle of non-refoulement was respected.

36. **Mr. Murillo Martínez** said that he would welcome detailed information on studies on the incidence of violence against Roma women, which had been mentioned in NGO reports. He also wished to hear more about training provided to law enforcement agents on the implementation of Organic Act No. 4/2015 on the protection of public safety in relation to identity checks and about the findings of the "Map of Discrimination in Spain". He invited the delegation to comment on the additional restrictions faced by persons in migrant holding centres in Ceuta and Melilla as compared with those on the mainland and on reports that stays in such centres could be excessively long, in some cases up to seven years. He also requested information on the difficulties faced by migrants and asylum seekers in exercising the right to family reunification and on the frequent freezing of asylum claims, particularly for applicants from sub-Saharan Africa; the criteria for obtaining citizenship and the reason for the dramatic increase in the number of rejected applications; and the barriers faced by migrants and asylum seekers, particularly those from Africa, in accessing housing.

37. **The Chair**, noting that, in general, throughout Europe members of the Roma community wished to be referred to as "Roma" and considered the term "Gypsy" to be derogatory, asked what the preferred term was in Spain. She would welcome clarification of whether the National Strategy for the Social Inclusion of the Gypsy Population covered both Spanish Roma and Roma from elsewhere and how the Strategy had been rated by the European Union. She would also be interested to know how the National Action Plan for Social Inclusion 2013-2016 had been evaluated and whether specific measures to address racial discrimination would be included in the country plan for the implementation of the Sustainable Development Goals.

38. **Mr. Kut** said that, while the Committee was justified in requesting statistics that would reveal the existence of discrimination, or the lack thereof, in a particular State party, it should not, in his view, request data on the racial origin of the population. He concurred with the State party's view that the collection of such statistics would be discriminatory. With regard to the issues that had been raised in relation to the State party's past, he did not believe that the Convention provided the grounds for settling historical accounts. As to the refugee crisis, the fact that Spain had not closed its borders as many other European States had done was commendable. It was apparent from the report that the Government was aware of the responsibilities that that decision entailed, and although some of the Committee's comments might be seen as criticism, he stressed that it wished to support the State party in resolving the difficulties it faced.

39. **Mr. Cereceda Fernández-Oruña** (Spain) said that Organic Act No. 4/2015 on the protection of public safety, which had entered into force in July 2015, marked an important step forward. It was the first law to provide that, when carrying out identity checks, the police must adhere strictly to the principles of proportionality, equal treatment, and non-discrimination on the grounds of birth, nationality, racial or ethnic origin, sex, religion, age, disability, sexual orientation or gender identity. Unlike the previous law, the new Act specified that identity checks should be carried out only if there were indications that the individual in question had participated in the commission of an offence or if the identity check was considered necessary in order to prevent the commission of a crime. Individuals must always be clearly informed of the reason for the identity check and could only be requested to accompany police officers to the nearest police station if it was not possible to check their identity on the spot; in such cases, they could not be held at a police station for more than six hours. Police stations were required to keep a register of all the identity checks carried out, an extract of which was to be submitted monthly to the Public Prosecution Service, with details of the length of each check. Individuals who had to go to a police station for an identity check were now provided with a confirmation slip indicating the time and duration of the check as well as the reason and the names of the police officers involved. Instructions for law enforcement agents had also been issued to accompany the Act.

40. Since the Act had entered into force, there had been a 15 per cent decrease in the number of on-the-spot identity checks and a 27 per cent decrease in checks at police stations. Under the Act, foreign nationals could not be deprived of their original identity documents unless they were the subject of an investigation for the commission of a crime, not an administrative offence. Foreign nationals and Spanish citizens had virtually the same obligations in terms of identity documents, as the latter were required to carry a valid identity card as of the age of 14 and to submit to identity checks when so requested by the relevant authorities for the purpose of investigating and preventing crimes. Act No. 12/2009 of 30 October 2009 on the right to asylum set out the details of the documentation required by asylum seekers.

41. **Ms. Candela Quintanilla** said that the collection of statistics on the ethnic composition of the population was restricted by Spanish legislation and regulations. Organic Personal Data Protection Act No. 15/1999 specifically provided that personal data related to racial origin, health and sexuality could be collected, processed and released only where the law so provided or the individual concerned gave express consent. The Government considered that keeping statistics on the racial origin or ethnicity of the population would contribute to discrimination, but it did collect data on the nationality of people living in Spain. According to the findings of a nationwide survey on perceptions of discrimination conducted in 2013, 90 per cent of respondents recognized and were concerned about the existence of some form of discrimination in Spain and more than 50 per cent strongly supported an integrated society. However, some respondents expressed

reluctance about living alongside immigrants. The Government intended to take action to change such attitudes.

42. A similar survey had been conducted among potential victims of discrimination on the grounds of racial or ethnic origin from eight ethnic groups: Eastern European, sub-Saharan African, North African, East Asian, Indian/Pakistani, Afro-Caribbean and Afro-Latino, Andean/Latin American and Spanish Gypsies. The majority of respondents had reported that they had experienced discrimination on the basis of place of origin, skin colour, cultural practices or religious beliefs and that the discrimination had occurred in the workplace, in public and leisure facilities, in public administration institutions and in housing. The survey had highlighted the very low level of reporting of discrimination: only 10.2 per cent of respondents had lodged a complaint, mostly for physical or verbal assault.

The meeting rose at 6.05 p.m.